

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CESAR EUTEMIO CANTU, #32028-279,

Petitioner,

v.

ACTION NO. 2:22cv517

D. LEU, Warden,

Respondent.

FINAL ORDER

Petitioner Cesar Eutemio Cantu filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 on December 13, 2022. ECF No. 1. Cantu, a federal prisoner convicted and sentenced in the Southern District of Texas in 2012, and housed in the Federal Correctional Complex in Petersburg, Virginia, challenges his sentence under the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). *Id.* at 1–2.

This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation.

The report and recommendation, filed October 19, 2023, recommends that Cantu’s petition be dismissed without prejudice for lack of subject matter jurisdiction. R. & R. at 1, 5, ECF No. 12. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. *Id.* at 6. No objections have been filed.


The Court, having reviewed the record, does hereby adopt and approve the findings and

recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that the petition for a writ of habeas corpus, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

Cantu has failed to demonstrate a “substantial showing of the denial of a constitutional right,” and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003).

Cantu is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Governing § 2254 Cases in U.S. Dist. Cts. 11(a). **If Cantu intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this final order. Cantu may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall mail a copy of this final order to Cantu and counsel of record for Respondent.

/s/ 
Elizabeth W. Hanes
United States District Judge

Elizabeth W. Hanes
United States District Judge

Norfolk, Virginia
December 12, 2023